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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERTO MORA SOLIS,

Defendant and Appellant.

2d Crim. No. B178856
(Super. Ct. No. 2002011846)
(Ventura County)

Alberto Mora Solis appeals his conviction for second degree murder. (Pen. Code, §§ 187, subd. (a), 189.)¹ He claims the trial court erred by failing to instruct the jury on the lesser included offenses of voluntary and involuntary manslaughter based on evidence that his mental condition negated the element of malice required for murder. We affirm.

FACTS

Solis and victim Olga Solis were married in 1991. At approximately 2:00 p.m. on April 14, 2002, appellant's brother Pedro Solis returned home from work.² He

¹ All statutory references are to the Penal Code.

² We refer to Olga Solis and Pedro Solis by their first names for convenience.

lived in a house behind Solis and Olga's home. Pedro spoke with Solis in the backyard, and thought Solis was calm but restless. Pedro saw cuts on Solis's neck. He asked Solis where Olga was, and Solis said she was sleeping.

Pedro thought something was wrong and decided to call a relative. When he entered Solis and Olga's house to make the telephone call, he saw blood on the closed door to Olga's bedroom. Pedro left the house without entering the bedroom. Later in the afternoon, Pedro returned with two relatives. Solis came out of his house and appeared strange. Seeing cuts on Solis, Pedro and the other relatives feared something had happened to Olga and called the police. Solis stated that he had killed Olga, but remained calm as he waited for the police to arrive.

The police arrived shortly after 4:00 p.m., and found Olga's body on the bed in her bedroom. She was soaked in blood and a box cutter and knife were on the bed next to her. Solis had cut the jugular vein on the left side of her neck with the box cutter. There were many other cuts on her face and neck and on her breast.

Police found an old letter with new writing on the envelope that stated: "I Alberto am still alive. I kill Olga because I love her. I loved her a lot because she also loved me and now we are both together. . . ."

When interviewed by the police, Solis stated that when Olga woke up at 10:00 a.m., she refused to have sex with him and Solis believed that she was not responding to him properly. Solis stated that he went outside, saw his box cutter, and decided to kill Olga and himself. He took his box cutter into the bedroom and talked to Olga for a few minutes. When Olga turned away and asked him to let her rest, Solis put the blade to her neck and cut her three times until she started bleeding. When asked what he was doing, Solis said, "because I love you." Olga struggled and Solis held her down. Olga said she was dying, and Solis responded that, "it doesn't matter." He continued to cut her and hold her until the blood drained from her body. Solis then cut himself with the box cutter and a knife from the kitchen. When he finished cutting Olga, he changed out of his bloody clothes.

Solis told police that he killed Olga because they had problems they could not solve, including financial difficulties, inability to have children, and infrequent sexual relations. He also felt "cooped" up inside the house and his nerves were bothering him during the days before the murder. He and Olga had talked about separation, and how to divide the house in the event of divorce. He stated that he knew killing Olga was a crime, but that he could not stop himself. Something made him kill her.

Solis pleaded not guilty and not guilty by reason of insanity. In a bifurcated trial, the jury returned a guilty verdict for second degree murder, and then found Solis to be sane.

During the guilt phase of trial, psychiatrist Michael Ferguson and forensic psychologist Jose La Calle testified regarding Solis's mental condition. Dr. Ferguson testified that he treated Solis in the county jail after his arrest and that Solis suffered from a psychotic disorder. Solis spoke coherently but was tense and disturbed, had a menacing countenance, heard voices, and was thinking about suicide.

Dr. La Calle testified that Solis suffered from "schizoaffective disorder with psychotic depression." Dr. La Calle testified that symptoms of the psychosis included restlessness, anxiety over mounting debts, and problems with sleeping and eating, auditory hallucinations, talking to himself, and a fear that someone was trying to kill him. Dr. La Calle believed these symptoms were present immediately before and after he killed his wife.

Dr. La Calle testified that Solis was psychotic when he killed Olga. He testified that Solis's judgment was impaired and Solis was not thinking coherently or logically. Dr. La Calle noted that Solis was unable to verbalize a reason for killing his wife, and that Solis acted illogically in reviewing the history of his marriage after he killed Olga and also in believing Olga and he would be together in heaven. Dr. La Calle emphasized that Hispanic cultural influence impaired Solis because he was unable to fulfill the traditional male role in his marriage.

DISCUSSION

Solis contends that the trial court erred by failing to instruct the jury *sua sponte* on voluntary and involuntary manslaughter. He argues that, although defense counsel considered the instruction unwarranted, the court should have instructed the jury that he could be found guilty of voluntary or involuntary manslaughter if the jury concluded that, due to his abnormal mental condition, he did not harbor the malice required for murder at the time of the offense. We disagree.

In 1981, the Legislature abolished the diminished capacity defense and precluded consideration of an abnormal mental condition as to the *capacity* of a defendant to form the mental state required for a specific intent crime. (§ 28, subd. (a);³ see also §§ 22, 25, 29, 188; *People v. Saille* (1991) 54 Cal.3d 1103, 1111 (*Saille*).) But, a jury may consider a defendant's mental condition in deciding whether he or she *actually* had the requisite intent while committing the crime. (§ 28, subd. (a); *Saille*, at pp. 1116-1117.) As long as a specific state of mind is a necessary element of an offense, a defendant may present relevant evidence raising a doubt about whether that state of mind was present.

The trial court instructed the jury in accordance with these principles. Instructions defined murder as the unlawful killing of a human being with malice aforethought (§ 187, subd. (a)), and set forth the differences between first and second degree murder. (See, e.g., *People v. Anderson* (2002) 28 Cal.4th 767, 782.) The trial court also instructed the jury to consider evidence that Solis suffered from a mental

³ Section 28, subdivision (a) provides: "Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged." Subdivision (b) of the statute states: "As a matter of public policy there shall be no defense of diminished capacity, diminished responsibility, or irresistible impulse in a criminal action"

disease or disorder for the purpose of determining whether he actually formed the mental state of malice aforethought at the time he killed his wife Olga.⁴

Solis argues that the trial court should have gone further and instructed the jury on voluntary and involuntary manslaughter as lesser included offenses that involve "the unlawful killing of a human being without malice." (§ 192.) It is established, however, that an unlawful killing with intent to kill or in conscious disregard for life may be "reduced" from murder to voluntary manslaughter *only* where malice is negated by evidence that the killing was committed in a sudden quarrel or heat of passion or in the unreasonable but good faith belief in the need for self-defense. (*People v. Rios* (2000) 23 Cal.4th 450, 460; *People v. Barton* (1995) 12 Cal.4th 186, 199; § 192, subd. (a).)

The evidence does not support the theory that Solis killed Olga under either of these circumstances, and Solis makes no such contention. In essence, Solis proposes a third non-statutory category of voluntary manslaughter where malice is negated by the defendant's diminished mental state. Such a category of manslaughter no longer exists in California.

In *Saille*, the defendant argued that evidence of intoxication or an abnormal mental condition could negate malice and reduce murder to voluntary manslaughter because the abolition of the diminished capacity defense does not prevent a defendant from showing that he or she actually lacked the requisite mental state. (*Saille, supra*, 54 Cal.3d at pp. 1112-1113.) The Supreme Court rejected this argument, and held that the 1981 legislative amendments abolishing the diminished capacity defense do not "permit[] a reduction of what would otherwise be murder to nonstatutory voluntary manslaughter due to voluntary intoxication and/or mental disorder." (*Id.*, at pp. 1107, fn. omitted, 1112-1113.) *Saille* concluded that, even where an abnormal mental condition shows the

⁴ The trial court instructed the jury with CALJIC No. 3.32 as follows: "You have received evidence regarding a mental disease or mental disorder of the defendant at the time of the commission of the crime charged. You should consider this evidence solely for the purpose of determining whether the defendant actually formed the required mental state, specifically malice aforethought, which is an element of the crime charged, and on the elements of premeditation and deliberation, and lying in wait."

absence of malice in actuality, the amended definition of malice in section 188 precludes a conviction for voluntary manslaughter as a middle ground between murder and acquittal. (*Id.*, at pp. 1113-1114; see also *People v. Wright* (2005) 35 Cal.4th 964, 979 (conc. opn. of Brown, J.).)

We reject the arguments made by Solis that the unequivocal holding of *Saille* has been undermined by subsequent cases and is no longer good law. Solis relies on *In re Christian S.* (1994) 7 Cal.4th 768, 771, which held that the abolition of the diminished capacity defense did not abolish the doctrine of unreasonable self-defense. Although the court refined certain dictum in *Saille*, nothing in *In re Christian S.* casts doubt on *Saille*'s holding. (*In re Christian S.*, at p. 779.) Solis also notes that, in 2000, the Supreme Court held that voluntary manslaughter does not require an intent to kill. (*People v. Lasko* (2000) 23 Cal.4th 101, 109-110; *People v. Blakeley* (2000) 23 Cal.4th 82, 88-89.) But, Solis fails to demonstrate how *Saille*'s reliance on the statutory definition of malice is undermined by this development in the law of voluntary manslaughter.⁵ Moreover, more recent cases acknowledge the continuing authority of *Saille*. (*People v. Steele* (2002) 27 Cal.4th 1230, 1254; *People v. Rios, supra*, 23 Cal.4th at p. 460; *People v. Padilla* (2002) 103 Cal.App.4th 675, 678-679.)

Solis also argues that *Saille* incorrectly interpreted the 1981 statutory amendments. Such criticism does not affect our obligation to follow the rulings of our Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

In addition to his arguments regarding voluntary manslaughter, Solis contends that the trial court erred by failing to instruct the jury on involuntary

⁵ Although *Blakeley* and *Lasko* state that intent to kill is not a necessary element of voluntary manslaughter, the Supreme Court "meant only to make clear that voluntary manslaughter, but no lesser offense, is *also* committed when one kills unlawfully, and with *conscious disregard for life*, but lacks malice because of provocation or imperfect self-defense." (*People v. Rios, supra*, 23 Cal.4th at pp. 460-461, fn. 7.)

manslaughter.⁶ He asserts that there was substantial evidence that he was "unconscious" when he killed Olga and that such evidence supports a conviction for involuntary manslaughter. We disagree.

Generally, "unconsciousness" is a complete defense to a criminal act, not a basis for an involuntary manslaughter conviction. (§ 26, par. Four; see *People v. Ray* (1975) 14 Cal.3d 20, 25, disapproved on another ground in *People v. Blakeley, supra*, 23 Cal.4th 82.) Solis did not claim unconsciousness as a complete defense at trial, and there is no substantial evidence that Solis was unconscious due to his mental condition or otherwise when he killed his wife. (*People v. Lewis* (2001) 25 Cal.4th 610, 645 [instruction on a lesser included offense is proper only when there is substantial evidence of the commission of the lesser offense].) Solis relies on his own statements that he felt like he was "sleepwalking," and killed his wife without thinking about it. These statements may show Solis was not thinking clearly but there is no evidence, including expert opinion testimony, that he did not understand what he was doing.

In fact, Solis is not claiming unconsciousness as a complete defense on appeal. Based on his citation of authority, he is relying on the doctrine that unconsciousness induced by voluntary intoxication constitutes a partial defense that would reduce murder to involuntary manslaughter. (See *People v. Ray, supra*, 14 Cal.3d at p. 25; see also CALJIC No. 8.47.) "When a person renders himself or herself unconscious through voluntary intoxication and kills in that state, the killing is attributed to his or her negligence in self-intoxicating to that point, and is treated as involuntary manslaughter." (*People v. Ochoa* (1998) 19 Cal.4th 353, 423; see also CALJIC No. 8.47.) But, again, Solis did not claim voluntary intoxication in the trial court, and there is

⁶ Involuntary manslaughter is "the unlawful killing of a human being without malice . . . in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection." (§ 192, subd. (b).)

no evidence Solis was intoxicated to any degree at the time of the killing.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

James P. Cloninger, Judge
Superior Court County of Ventura

Madeline McDowell, under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jaime L.
Fuster, Supervising Deputy Attorney General, Zee Rodriguez, Deputy Attorney General,
for Plaintiff and Respondent.